IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

OP.No. 28620 of 2002(F)

PETITIONERS:
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1. **PRASANTH N. KAIMAL,**
   PART TIME SANSKRIT TEACHER, MUSLIM L.P.SCHOOL,
   MYLOOR, PALLARIMANGALAM P.O., KOTHAMANGALAM.

2. **HAMZA P. PALATHINGAL**
   PART TIME URUDU TEACHER, DO. DO.

BY ADV. SMT.SUMATHY DANDAPANI

RESPONDENTS:
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1. **THE ASSISTANT EDUCTIONAL OFFICER,**
   KOTHAMANGALAM.

2. **THE HEADMASTER, MUSLIM LOWER PRIMARY**
   SCHOOL, MYLOOR, PALLARIMANGALAM P.O.,
   KOTHAMANGALAM.

R1 BY GOVERNMENT PLEADER SMT.SMITHA SUKUMAR
R2 ADV. SMT.P.RANI DIOTHIMA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.48620/2002 IN O.P.NO.28620/2002

DISMISSED.

20.7.2007 Sd/-THOTTATHIL B.RADHAKRISHNAN,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF APPOINTMENT ORDER NO.G/1632/02/K.DIS. DATED 28.7.2000 ISSUED BY THE MANAGER OF THE 2ND RESPONDENT SCHOOL TO THE 1ST PETITIONER.

EXT.P2: COPY OF APPOINTMENT ORDER DATED 25.1.2001 ISSUED TO THE 2ND PETITIONER BY THE MANAGER OF 2ND RESPONDENT SCHOOL, VIDE NO.G.6400/01/K.DIS.

EXT.P3: COPY PF ORDER NO.B4-27582/2000/K.DIS. DATED 30.11.2000 OF THE DEPUTY DIRECTOR (EDUCATION), ERNAKULAM, ISSUED TO THE RESPONDENTS AND OTHERS.

EXT.P4: COPY OF ORDER NO.B4/29828/01K.DIS. DATED 30.3.2002 OF THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM, TO THE RESPONDENTS.

EXT.P5: COPY OF AUDIT ENQUIRY NO.6 OF THE AUDIT OFFICER, OFFICE OF THE 1ST RESPONDENT VIDE ENDT. ON C-1205/02 DATED 5.7.2002.

EXT.P6: COPY OF INTIMATION OF THE SENIOR SUPERINTENDENT, OFFICE OF THE 1ST RESPONDENT ISSUED TO THE 2ND RESPONDENT VIDE NO.G/5323/02/BILL DATED 1.10.2002.

EXT.P7: COPY OF GOVERNMENT ORDER NO.2/96/G.EDM. DATED 28.3.1996 REFERRED TO IN THE ORIGINAL PETITION.

EXT.P8: COPY OF ORDER, G.O.(RT) NO.2978/99/G.EDN. DATED 30.6.1999 OF THE GOVERNMENT OF KERALA, REFERRED TO IN THE ORIGINAL PETITION.

EXT.P9: COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 30.9.2002.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

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O.P.No.28620 of 2002

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Dated this the 20th day of July, 2007

JUDGMENT

Taking note of Ext.P9 produced along with C.M.P.No.51414/2002 this Court passed the following interim order on 07.08.2003 on C.M.P.No.48620/2002.

> "Heard both the sides. The petitioners are respectively part-time Sanskrit Teacher. They claim payment of salary for the academic year 2001-02 on the strength of Ext.P4 order of the Deputy Director. For the Academic year 2002-03, they claim salary on the strength of Ext.P9 order of staff fixation issued by the AEO. As long as these orders are in force, there is no justification for not paying the salary due to the petitioners. Therefore, the 1st respondent shall release the salary due to the petitioners up to 15.07.03 within two months from the date of production of a copy of this order. If the 1st respondent has got a case that the above mentioned orders have been revised by any of the competent authorities, he will be free to move this C.M.P. For further orders after filing a counter affidavit."

2.. No counter affidavit is on record even now.

3. Therefore, the admitted position is that Ext.P9 staff fixation order governed the situation. If that be so, the petitioners are entitled to the relief sought for in this writ petition as rightly noticed in the aforesaid interim order unless Ext.P9 staff fixation order is revised. There is no justification for not paying the salary due to the petitioner and the objections raised in the form of Ext.P5 would not stand. As a consequence Ext.P6 also has to go.

In the result, this writ petition is allowed quashing Exts.P5 and P6.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs